

A

V.C. CHINNAPPA GOUDAR

v.

B

KARNATAKA STATE POLLUTION CONTROL BOARD &
ANR.

(Criminal Appeal No. 755 of 2010)

MARCH 10, 2015.

C

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
SHIVA KIRTI SINGH, JJ.]

D

Code of Criminal Procedure, 1973 – ss.5 and 197 – Protection u/s. 197 – To public servants – For prosecution u/ s. 48 of the Water (Prevention and Control of Pollution) Act, 1974 – Availability of – Held: The statutory prescription contained in s.48 of 1974 Act, is in conflict with s.197 Cr.P.C. and hence protection u/s. 197 Cr.P.C. is not available to public servants – Since there is no specific provision under 1974

E

Act, providing for securing sanction before proceeding, in view of s.5 Cr.P.C. also protection u/s. 197 is not available – Water (Prevention and Control of Pollution) Act, 1974 – s.48.

Dismissing the appeals, the Court

F

HELD: 1. Under Section 48 of Water (Prevention and Control of Pollution) Act, 1974 the guilt is deemed to be committed, the moment the offence under the 1974 Act is alleged against the Head of the Department of a

G

Government Department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of

H

such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the Department of the Government Department to seek umbrage u/s. 197 Cr.P.C. and such a course, if permitted to be made, that would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act. [Para 8] [656-E-H; 657-A]

2. Section 5 Cr.P.C. makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C. would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. [Para 9] [657-B-C]

3. Thus, in the light of the said statutory prescription contained in Section 48, there is no scope for invoking Section 197 Cr.P.C. even though the appellants are stated to be public servants. [Para 10] [657-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 755 of 2010 etc.

From the Judgment and Order dated 13.02.2009 of the High Court of Karnataka at Bangalore in Writ Petition No. 13664 of 2008 (GM-POL)

WITH

CrI. A. No. 464 of 2015

A A. Mariarputham, S. N. Bhat, E. C. Vidya Sagar,
Jennifer John, Subhash Chandra Sagar, V. N. Raghupathy,
Parikshit P. Angadi, Sanjay R. Hegde for the appearing parties.

The Judgment of the Court was delivered by

B **FAKKIR MOHAMED IBRAHIM KALIFULLA J.**

1. Heard learned counsel for the parties.

2. Leave granted in SLP(Crl.) 7732 of 2010.

C 3. By the impugned judgment in these appeals, the
Division Bench of the High Court dismissed the application
under Articles 226 and 227 of the Constitution of India for
quashing the complaint and all other proceedings in C.C.
D No.758/2005/367/08 on the file of J.M.F.C., Nippani, Judicial
Magistrate, First Class, Sankeshwar. As the issue dealt with
by the Division Bench of the High Court is identical, both the
appeals are disposed of by this common order.

E 4. The appellant in Criminal Appeal No. 755 of 2010
was holding the post of Commissioner and the appellant in
the case of Criminal Appeal arising out of SLP(Crl) No. 7732
of 2010 was in the post of Chief Officer Grade II. The question
that was posed for consideration before the Division Bench
F was that both the appellants admittedly being public servants,
the prosecution as against them could not have been lodged
under Section 48 of the Water (Prevention and control of
Pollution) Act, 1974 [hereinafter called the '1974 Act']. The said
contention was raised on the footing that being public servants,
G sanction under Section 197 Cr.P.C. was required before the
prosecution was launched against them. The Division Bench
held that by virtue of Section 48 read along with Section 49(1)
of the 1974 Act, there was a clear conflict with Sections 415
and 197 of the Criminal Procedure Code and consequently

H

Section 60 of the 1974 Act would operate and, therefore, the protection claimed by the appellants under Section 197 Cr.P.C. cannot be extended to them. A

5. Mr. Bhat in his submissions after drawing our attention to Sections 4(2)(5) and 197 of the Cr.P.C. as well as Sections 48 and 49 of the 1974 Act contended that the 1974 Act does not in any way conflict with Section 197 Cr.P.C. and that and when once the appellants are indisputably public servants, without getting appropriate sanction from the Government they could not have been proceeded against under the 1974 Act. Learned counsel while drawing support from Section 4(2) Cr.P.C. contended that getting a sanction under Section 197 is not prohibited under the provisions of the 1974 Act and that there being no other provision under the said Act contrary to the prescription contained in Section 197 Cr.P.C. by virtue of application of Section 4(2) Cr.P.C., the requirement of getting a sanction under Section 197 for prosecuting the appellants under the 1974 Act was mandatory. B C D

6. As far as Section 49 of the 1974 Act is concerned, the counsel contended that though the heading of the said provision states "Cognizance of Offences" the said Section is mainly intended for the concerned authority to file the case against the accused by placing the complaint before the concerned Court and the prescription contained in the said Section are intended only for fulfilling the said requirement and, therefore, going by the heading of the said Section it cannot be held that the Magistrate can straight away take cognizance of an offence *de hors* the non-compliance of the requirements under Section 197 Cr.P.C. E F G

7. As against the above submission, Mr. A. Mariarputham, learned senior counsel for the respondent by drawing our attention to Section 5 Cr.P.C. and Section 48 of H

A the 1974 Act, contended that under Section 48 there is a rebuttable presumption insofar as the guilt of the offence is concerned as against the Head of the Department in respect of any offence said to have been committed by any Department of the Government and that if Section 197 sanction is held to be mandatory even for proceeding against Head of the Department of Government Department, the same would directly conflict with Section 5 of Cr.P.C. and consequently Section 60 of the 1974 Act gets attracted. According to learned senior counsel, if the application of Section 197 is held to be attracted and in the event of the sanction being refused by prosecution that by itself would be an impediment for the operation of the deemed fiction contained in Section 48 of the 1974 Act. The learned senior counsel, therefore, contended that in such an event there would be a direct conflict of Section 48 of the 1974 Act with Section 197 Cr.P.C. and consequently Section 60 of the 1974 Act would come into play which has an overriding effect on any other enactment other than the 1974 Act.

E 8. Having considered the respective submissions, we find force in the submission of Mr. A. Mariparputham, learned senior counsel for the respondents. As rightly pointed out by the learned senior counsel under Section 48, the guilt is deemed to be committed the moment the offence under the 1974 Act is alleged against the Head of the Department of a Government Department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the

V.C. CHINNAPPA GOUDAR v. KARNATAKA STATE PCB 657
[FAKKIR MOHAMED IBRAHIM KALIFULLA, J.]

Department of the Government Department to seek umbrage A
under Section 197 Cr.P.C. and such a course if permitted to
be made that would certainly conflict with the deemed fiction
power created under Section 48 of the 1974 Act.

9. In this context, when we refer to Section 5 Cr.P.C., B
the said Section makes it clear that in the absence of specific
provisions to the contrary, nothing contained in the Cr.P.C.
would affect any special or local laws providing for any special C
form or procedure prescribed to be made applicable. There
is no specific provision providing for any sanction to be
secured for proceeding against a public servant under the
1974 Act. If one can visualise a situation where Section 197
Cr.P.C. is made applicable in respect of any prosecution under
the 1974 Act and in that process the sanction is refused by the D
State by invoking Section 197 Cr.P.C. that would virtually negate
the deeming fiction provided under Section 48 by which the
Head of the Department of Government Department would
otherwise be deemed guilty of the offence under the 1974 Act.
In such a situation the outcome of application of Section 197 E
Cr.P.C. by resorting to reliance placed by Section 4(2) Cr.P.C.
would directly conflict with Section 48 of the 1974 Act and
consequently Section 60 of the 1974 Act would automatically
come into play which has an over riding effect over any other
enactment other than the 1974 Act. F

10. In the light of the said statutory prescription contained
in Section 48, we find that there is no scope for invoking
Section 197 Cr.P.C. even though the appellants are stated to
be public servants. G

11. We, therefore, do not find any scope to interfere
with the judgment impugned in these appeals. The appeals
fail and the same are dismissed.

H

A 12. Counsel for the appellants states that the appellants may be permitted to appear through their counsel. If and when the appellants apply for dispensing with their appearance by invoking Section 205 Cr.P.C. by filing special vakalat, the same shall be considered favourably by the learned trial Judge.

B

Kalpana K. Tripathy

Appeals dismissed.